

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SIDNEY D. JENKINS, III,

Plaintiff,

v.

MICHAEL MEYERS,

Defendant.

No. CV-12-5053-EFS

**ORDER GRANTING DEFENDANT MEYERS'
MOTION FOR SUMMARY JUDGMENT,
ENTERING JUDGMENT, AND CLOSING
THE FILE**

On May 2, 2012, Plaintiff Sidney D. Jenkins III filed a *pro se* 42 U.S.C. § 1983 complaint, ECF No. 1, against Defendant Sergeant Michael Meyers for violating the First and Fourteenth Amendments to the United States Constitution. Mr. Jenkins claims Sgt. Meyers' rejection of prayer oil that Mr. Jenkins had ordered from an unauthorized vendor deprived him of his free exercise and equal protection rights. *Id.* Sgt. Meyers seeks summary judgment on Mr. Jenkins' claims because 1) the evidence does not establish triable issues of fact, and 2) he is entitled to qualified immunity. ECF No. 25. Mr. Jenkins opposes summary judgment arguing the deprivation of prayer oil was unreasonable and asserting Sgt. Meyers went against "precedent" to deprive him of prayer oil based on racial and religious prejudice. ECF No. 33. Having reviewed the record and the relevant

1 authority, the Court is fully informed and grants Sgt. Meyers' summary
2 judgment motion for the reasons provided below.

3 **A. Statement of Facts¹**

4 Mr. Jenkins is in the custody of the Washington Department of
5 Corrections (DOC) at the Washington State Penitentiary (WSP). Mr.
6 Jenkins, an Ithna-Asheri Shiite Muslim, uses prayer oil as part of his
7 religious practice. ECF No. 12 at 2.

8 DOC regulations require that items purchased by inmates come
9 from an approved vendor list managed by the DOC. ECF No. 27. A
10 vendor is placed on this list so long as they comply with Material
11 Safety Data Sheets (MSDS) which allow the DOC to determine the oil's
12 Hazardous Material Identification System (HMIS) rating. See ECF No.
13 26, at 2. The purpose of the rating is to determine "the health,
14 flammability, and reactivity" of the religious oil. ECF No. 27, at 2.

15 In April 2012, a DOC policy change required religious packages
16 to be processed through the WSP property room and then forwarded to
17 the chaplain, rather than being processed solely by the chaplain. ECF
18 No. 26. As a result of this policy change, it was discovered the
19 chaplain had been using an outdated vendor list which inadvertently

20
21 ¹ When considering this motion and creating this factual section, the
22 Court 1) believed the undisputed facts and the non-moving party's
23 evidence, 2) drew all justifiable inferences therefrom in the non-
24 moving party's favor, 3) did not weigh the evidence or assess
25 credibility, and 4) did not accept assertions made by the non-moving
26 party that were flatly contradicted by the record. *Anderson v.*
Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); *Scott v. Harris*, 550
U.S. 372, 380 (2007).

1 allowed inmates to buy religious oil from an unauthorized vendor. ECF
2 No. 26. Due to this mistake, inmates were granted a one-time
3 exception to the policy in September 2011. *Id.* Inmates who received
4 packages from unauthorized vendors were notified that no further
5 exceptions would be made. *Id.*

6 On December 7, 2011, a package of religious oil from an approved
7 vendor was received by Mr. Jenkins and signed for by the chaplain as
8 the "issuing officer."² ECF No. 37. In early December 2011, Mr.
9 Jenkins ordered more prayer oil, using a different vendor, Garden of
10 Fragrances. ECF No. 12, at 7. However, on January 12, 2012, when the
11 oil was received, Garden of Fragrances was not an approved vendor.
12 *Id.* Therefore, Sgt. Meyers rejected the package on January 12, 2012.

13 Mr. Jenkins claims Sgt. Meyers violated his constitutional
14 rights of free exercise and equal protection under § 1983. ECF No.
15 12, at 11, 14. Sgt. Meyers seeks summary judgment. ECF No. 25.

16 **B. Standard**

17 Summary judgment is appropriate if the record establishes "no
18 genuine dispute as to any material fact and the movant is entitled to
19 judgment as a matter of law." Fed. R. Civ. P. 56(a). The party
20 opposing summary judgment must point to specific facts establishing a
21 genuine dispute of material fact for trial. *Celotex Corp. v. Catrett*,
22 477 U.S. 317, 324 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio*
23 *Corp.*, 475 U.S. 574, 586-87 (1986). If the non-moving party fails to
24

25 ² The Court grants Mr. Jenkins' Request to Supplement Exhibits ECF No.
26 37.

1 make such a showing for any of the elements essential to its case for
2 which it bears the burden of proof, the trial court should grant the
3 summary judgment motion. *Celotex Corp.*, 477 U.S. at 322.

4 **C. Analysis and Conclusion**

5 Mr. Jenkins asserts two claims under § 1983, which states:

6 Every person who, under color of any statute, ordinance,
7 regulation, custom, or usage, of any State . . . subjects,
8 or causes to be subjected, any citizen of the United States
9 . . . to the deprivation of any rights, privileges, or
immunities secured by the Constitution and laws, shall be
liable to the party injured in an action at law, suit in
equity, or other proper proceeding for redress

10 42 U.S.C. § 1983. To establish a *prima facie* case under § 1983, the
11 plaintiff must first show that the conduct was under color of state
12 law. *West v. Atkins*, 487 U.S. 42, 48 (1988). In this case, it is
13 undisputed that Sgt. Meyers acted under color of state law as his
14 actions were pursuant to DOC policy. ECF No. 28, at 3; see also *Lugar*
15 *v. Edmondson Oil Co.*, 457 U.S. 922, 999 (1982) (defining color of
16 state law as "[m]isuses of power possessed by the virtue of state law
17 and made possible only because the wrongdoer is clothed with the
18 authority of state law.").

19 The second element of a *prima facie* § 1983 case is whether the
20 conduct violated a constitutional right. *West*, 487 U.S. at 48. It is
21 disputed whether Sgt. Meyers' conduct violated Mr. Jenkins' First
22 Amendment free exercise and Fourteenth Amendment equal protection
23 rights. The Court addresses each constitutional issue in turn.

24 **a. Mr. Jenkins has not shown a First Amendment violation.**

25 Mr. Jenkins claims a First Amendment violation because his order
26 of prayer oil was rejected on January 12, 2012, leaving him without

1 prayer oil to conceal his sins. ECF No. 33. Sgt. Meyers argues that
2 Mr. Jenkins has not presented evidence to establish a triable issue of
3 fact.

4 The First Amendment states:

5 Congress shall make no law respecting an establishment of
6 religion, or prohibiting the free exercise thereof; or
7 abridging the freedom of speech, or of the press; or the
8 right of the people peaceably to assemble, and to petition
9 the Government for a redress of grievances.

10 U.S. Const. amend. I. Inmates retain their First Amendment free
11 exercise rights. *Shakur v. Schriro*, 514 F.3d 878, 883-84 (9th Cir.
12 2008). Yet, in order to seek protection under the free exercise
13 clause, the inmate must have a sincerely held belief that has a
14 religious basis.³ *Shakur*, 514 F.3d at 885; *Callahan*, 658 F.2d at 683.

15 The prison may regulate the free exercise rights of an inmate as
16 long as the regulations are "reasonably related to legitimate
17 penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987).
18 The reasonableness of a prison's regulation is assessed using the
19 four-factor *Turner* balancing test:

- 20 1. Whether there is a "'valid, rational connection'
21 between the prison regulation and the legitimate
22 governmental interest put forward to justify it";
- 23 2. Whether there are "alternative means of exercising the
24 right that remain open to prison inmates";
- 25 3. Whether "accommodation of the asserted constitutional
26 right" will "impact . . . guards and other inmates,

23 ³ The standard used by the defendant in their motion for summary
24 judgment, the "centrality test" is no longer used. See *Shakur*, 514
25 F.3d at 884 ("Given the Supreme Court's disapproval of the centrality
26 test, we are satisfied that the sincerity test set forth in *Malik* and
Callahan determines whether the Free Exercise Clause applies.").

1 and on the allocation of prison resources generally";
2 and

- 3 4. Whether there is an "absence of ready alternatives"
4 versus the "existence of obvious, easy alternatives."

5 *Shakur*, 514 F.3d at 884 (citing *Turner*, 482 U.S. at 89-90).

6 Here, the Court accepts as true Mr. Jenkins' assertion that his
7 beliefs are sincere and his use of prayer oil has the religious
8 purpose of concealing sins. ECF No. 12, at 2, 9.

9 The Court assesses now whether the prison's prayer oil policy is
10 reasonable under the *Turner* factors. Under *Turner* factor one, the
11 governmental interest behind the HMIS is to ensure the safety and
12 security of the facility. ECF No. 25. The HMIS determines "the
13 health, flammability, and reactivity" of the religious oil. ECF No.
14 27, at 2. Religious oil with a HMIS hazard rating of two or higher is
15 not allowed because chemicals with this rating have flammable, health,
16 or caustic issues. *Id.* If a vendor did not submit a MSDS to show the
17 oils are safe or meet a rating of less than two, the vendor is not
18 approved. *Id.* Mr. Jenkins argues there is no rehabilitative or
19 deterrent effect to the regulations, challenging the legitimate
20 penological interest. ECF No. 33, at 8. However, the prison
21 regulation need not serve a rehabilitative or deterrent effect. Based
22 on the evidence before the Court, the Court finds there is a valid,
23 rational connection between the prison regulation and the legitimate
24 governmental interest put forward to justify it.

25 Under *Turner* factor two (the alternative means factor) and
26 *Turner* factor four (the absence of ready alternatives factor), Mr.
Jenkins does not raise a triable issue of fact because Sgt. Meyers

1 provided evidence showing Mr. Jenkins had the ability to purchase
2 prayer oil at all relevant times. ECF Nos. 30-1, -2, -3. Mr.
3 Jenkins' arguments on this issue are not substantiated by evidence.

4 Lastly, unapproved oil is potentially flammable and reactive.
5 ECF No. 27, at 2. Therefore, under *Turner* factor three, an
6 accommodation would impact the health and safety of guards and other
7 inmates.

8 Overall, Mr. Jenkins did not present evidence of a pattern or
9 practice of continuously shifting previously authorized vendors to
10 unauthorized status. The Court finds that this one-time rejection of
11 prayer oil (due to Garden of Fragrances no longer being an authorized
12 vendor) by Sgt. Meyers fails to establish a triable issue of
13 fact to support Mr. Jenkins' free exercise claim. Therefore, the
14 Court grants summary judgment in Sgt. Meyers' favor as to Mr. Jenkins'
15 free exercise claim.

16 **b. Mr. Jenkins has not shown a Fourteenth Amendment violation.**

17 Mr. Jenkins alleges Sgt. Meyers violated his Fourteenth
18 Amendment equal protection rights because four months prior to his
19 package rejection, eleven inmates ordered prayer oils from
20 unauthorized vendors and were allowed to receive the packages on a
21 one-time basis. ECF No. 29-1. Sgt. Meyers seeks summary judgment on
22 this claim because no "precedent" was established based on the
23 exception in September. ECF No. 25 at 7.

24 The Fourteenth Amendment reads in pertinent part:

25 No State shall make or enforce any law which shall . . .
26 deny to any person within its jurisdiction the equal
protection of the laws.

1 U.S. Const. amend. XIV, § 1. Under the equal protection clause, the
2 state must "treat all similarly situated people equally." *Shakur*, 514
3 F.3d at 891 (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S.
4 432, 439 (1985)). Prisoners must be given the opportunity to pursue
5 their faith "comparable to the opportunity afforded fellow prisoners
6 who adhere to conventional religious precepts." *Cruz v. Beto*, 405
7 U.S. 319, 322 (1972). Reasonableness of regulations abridging equal
8 protection are also subject to *Turner*. See supra p. 4.

9 Here, Mr. Jenkins failed to establish a triable issue of fact as
10 to whether he was treated unlike similarly situated inmates. He
11 offers no evidence to show other inmates in the relevant time frame
12 were given preferential treatment or that he was or Muslims in general
13 were, singled out. Additionally, Sgt. Meyers provides evidence
14 showing that no further exceptions were made regarding religious items
15 after discovery of the outdated vendor list in September 2011. ECF
16 No. 29, at 3-4. The evidence presented by Mr. Jenkins shows that on
17 September 8, 2011, inmates were allowed to receive packages from
18 unauthorized vendors. He goes on to argue that this created a
19 precedent; staff mistakes would be resolved in favor of the inmate.
20 ECF No. 12, at 14. Mr. Jenkins also provides an exhibit showing that,
21 although the procedure had changed, the chaplain was still signing off
22 on religious packages in December 2012. ECF No. 37. However, the
23 record does not show a violation of equal protection rights by Sgt.
24 Meyers, who was implementing a reasonable DOC policy, and the package
25 the chaplain signed off for in December was from an authorized vendor.
26

1 Therefore, after reviewing all of the evidence in Mr. Jenkins'
2 favor, the Court grants summary judgment in Sgt. Meyers' favor on the
3 equal protection claim.

4 **c. Qualified Immunity.**

5 The Court grants summary judgment to Sgt. Meyers on the above
6 claims, therefore, the Court need not address Sgt. Meyers' qualified
7 immunity argument.

8 **D. Conclusion**

9 For the above-given reasons, **IT IS HEREBY ORDERED:**

10 1. Mr. Jenkins' Request to Supplement Exhibits, **ECF No. 37**, is
11 **GRANTED.**

12 2. Sgt. Meyers' Motion for Summary Judgment, **ECF NO. 25**, is
13 **GRANTED.**

14 3. Judgment is to be entered in Sgt. Meyers favor.

15 4. All pretrial and trial dates and deadlines are **STRICKEN.**

16 5. Pending motions, including Defendant's Motion to Stay Trial
17 Date and All Pretrial Deadlines, **ECF No. 38**, are **DENIED AS**
18 **MOOT.**

19 6. This file shall be **CLOSED.**

20 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
21 Order and provide copies to Mr. Jenkins and counsel.

22 **DATED** this 25th day of July 2013.

23 s/Edward F. Shea
24 EDWARD F. SHEA
25 Senior United States District Judge
26